SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

75-1388

No. A-747

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

GLORIA V. GEORGE
Petitioner,

v.

WAKE COUNTY OPPORTUNITES, INC.
Respondant.

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

MARVIN SCHILLER
Suite 1016
Insurance Building
336 Fayetteville Street
Raleigh, North Carolina
27602

Attorney for Petitioner

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WAKE COUNTY OPPORTUNITIES, INC.
Respondant.

PETITION FOR A WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS

Petitioner, Gloria V. George, petitions for a writ of certiorari to review the judgment of the North Carolina Court of Appeals in the above-captioned case.

OPINION BELOW

The opinion of the North Carolina Court of Appeals (App. A, infra, pp. 1A-7A) is reported at 26 N.C. App. 732; 217 S.E. 2d 128 (1975).

JURISDICTION

The judgment of the court of appeals (App. A, infra, p. 1A),was rendered on August 6, 1975. On October 7, 1975, the Supreme Court of North Carolina denied a petition for a writ of certiorari. (App. B, infra, p. 8A). On December 2, 1975, the Supreme Court of North Carolina denied the Petitioner's motion for a rehearing of her petition for a writ of certiorari (App.C, infra, p. 9A). On March 4, 1976, Mr. Chief Justice Burger extended the time for filing a petition for a writ of certiorari to and including March 31, 1976. (App. D, infra, p.10A). The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the Fourteenth Amendment bars an appellate court from reversing a judgment for money damages on the basis of independent findings of fact which contradict the admissions and stipulations of the parties.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment provides in pertinent part:

> [No] State [shall] deprive any person of life, liberty, or property, without the due process of law.

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STATEMENT

After a trial by judge in the Wake County Superior Court for North Carolina, the Petitioner, pursuant to her motion for summary judgment, was awarded money damages in the amount of $43,364.90, together with interest thereon from October 11, 1974 until paid, and reinstatement of her position as an employee of Respondant. (App. E, infra, pp. 11A-13A) On appeal, the North Carolina Court of Appeals reversed the trial court's judgment. (App. A, infra, p. 7A).

1. The Petitioner's case largely rested upon the pleadings, the stipulations, a lengthy pre-trial order, and two hundred and one (201) pages of exhibits consisting primarily of regulations, procedures, and minutes of meetings.

The Petitioner's complaint alleges (App. F, infra, p. 14A)(R p 4) and the Respondant's answer admits (App. G, infra, p. 18A)(R p 8) that on or about September 21, 1967, the Petitioner and Respondant, a North Carolina corporation and delegate agency of the Office of Economic Opportunity (OEO), entered into a contract under which the Petitioner was employed to serve as Director of the Little River Community Action Center in Zebulon, North Carolina at an annual wage of $6,000, payable monthly. The Petitioner's complaint alleges (App. F, infra, pp.14A-15A)(R p 4) and the Respondant's answer admits (App. G, infra, p. 18A) (R p 8) that the Respondant's Executive

Director purported to discharge the Petitioner on July 26, 1968, effective August 12, 1968, and that thereafter the Petitioner initiated grievance proceedings.

The Petitioner's complaint alleges (App. F, infra, p. 15A)(R p 4-5) and the Respondant's answer admits (App. G, infra, p. 18A)(R p 9) that Respondant, as a grantee and delegate agency of the Office of Economic Opportunity (OEO) is subject to OEO Memo 23-A regarding employee grievances and which provides:

> "Employee grievances. Employee grievances shall be given prompt and fair consideration Grantee and delegate agencies shall make provisions for a review of personnel actions by the governing body or a committee appointed by the governing body in any case in which there is a claim of unfair treatment or of dismissal without cause." (Italics added).

The parties stipulated that Respondant had to provide for a review of personnel actions by its board of directors or a committee appointed by Respondant, and the Respondant elected to provide for a review by a grievance committee (App. H, infra, p. 22A)(R p 40).

The parties stipulated that the Grievance Committee made its report on

August 28, 1968 (App. H, infra, p.23A) (R p 41) and that the result of the grievance hearing was set forth in the Grievance Committee's report as follows:

> "...[t]he Grievance Committee recommends that Mrs. George be reinstated as Zebulon's Center Director for two weeks, on a probation basis, to re-access her relationship with the Executive Director. At such time the Executive Committee shall determine ....final disposition." (App. I, infra, p. 27A)(R p 40-40, Stipulation "n", R p 42, Stipulation "r", Ex. 47, Ex. pp. 164-165).

The complaint alleges (App. F, infra, pp. 15A-16A)(R p 5) and the answer admits (App. G, infra, p.19A)(R p 9) that the Respondant did not allow Petitioner to be reinstated or resume her duties after August 12, 1968. The parties also stipulated that the Petitioner received no compensation from the Respondant since August 12, 1968. (App. H, infra, p. 26A) (R p 43).

The trial judge found that the Petitioner was not discharged in accordance with the procedural requirements of the Respondant, is presently entitled to reinstatement, has made reasonable efforts to mitigate damages, and that it is reasonably probable that the Petitioner's employment would have continued to

this day but for her wrongful discharge. (App. E, infra, pp. 12A-13A)(R p 80).

2. In reversing the judgment of the trial court, the North Carolina Court of Appeals held that the Petitioner's contract of employment with the Respondant was terminable by either party at will. The basis for this holding, astonishingly enough, was that "there is nothing in the record to indicate that the dismissal procedure was incorporated into her contract." (App. A, infra, p. 6A)(Italics added). The court of appeals held in the alternative that even if the Petitioner's contract was not a contract at will, the Respondant complied with its own procedural safeguards and those required by the Office of Economic Opportunity (OEO). The alternative holding of the court of appeals is only slightly less astonishing than its primary holding. For Respondant admits that Petitioner was never permitted to resume her duties after August 12, 1968, despite the fact that the Grievance Committee ruled on August 28, 1968, that the Petitioner be reinstated for two weeks on a probation basis in order to reaccess her relationship with the Executive Director.

The Petitioner first raised the constitutional question, of whether an appellate court's reversal of a judgment for money damages on the basis of independent findings of fact which contradict the admissions and stipulations of the parties, constitutes the taking of property without due process of law

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as required by the Fourteenth Amendment, in her motion for a request for a hearing for a petition of a writ of certiorari in the North Carolina Supreme Court (App. J, infra, p. 29A). The Petitioner has exhausted her administrative and state remedies.

REASONS FOR GRANTING THE WRIT

This case presents the important question of whether the due process clause of the Fourteenth Amendment bars an appellate court from reversing a judgment for money damages on the basis of independent findings of fact which contradict the admissions and stipulations of the parties. Hence, this case involves a legal principle of both fundamental and major significance to the jurisprudence of the United States. This Court has apparently never held that due process entitles the Petitioner in a lawsuit to rely upon admissions and stipulations of his opponent as conclusive admissions, so long as they are entered into fairly and are not altered or withdrawn by amendment, thereby barring an appellate court from ruling in a manner which contradicts those admissions and stipulations. However, this Court in H. Hackfield & Co. v. United States 197 U.S. 442,446 (1905), held, without expressly relying upon due process, that an appellate court is barred from making independent findings of fact which contradict the stipulations of the parties.

The admissions and stipulations of the parties to a civil lawsuit are crucial to the mission of a trial, accurate ascertainment of truth. In rendering an opinion which contradicts the admissions and the stipulations of the parties, the court below effectively rendered the Respondant immune from the legal consequences which flow from his own admissions. The failure of this Court to reverse the decision below will be an invitation for every losing litigant to seek appellate review in the hope that he will, nonetheless, win a reversal by encouraging the appellate court to make independent findings of fact which contradict his own admissions and which, therefore, relieves him of liability. The courts have uniformly held that an appellate court may not treat the admissions of fact contained in the unamended and unwithdrawn pleadings and stipulations of the parties as less than conclusive. Indeed, this rule has been long recognized. "[I]t is a rule of law, that a finding which contradicts a fact admitted in the pleadings, is to be disregarded." McFerran v. Taylor, 7 U.S. (3 Cranch) 269, 279 (1806)(Marshall, C.J.). The courts in more recent times have also uniformly recognized the conclusiveness of stipulations of fact. "[A] stipulation by counsel ... establishes the facts absolutely. Of a certainty, it cannot be disregarded in an appellate court." Berry v. Commissioner, 254 F.2d 471,474 (9th Cir. 1957).

Respondant's appellate counsel was not

involved in the trial of the instant case. Undoubtedly as a result of unfamiliarity with the facts presented to the trial court and included in the record, Respondant stated, in its answer to Petitioner's petition for a writ of certiorari in the North Carolina Supreme Court that facts set forth in the "Factual Basis for Review" contained in the petition were in dispute (App. L, infra, pp.36A-41A), when in fact a thorough review of the record shows that said facts were not in dispute, most of them having been stipulated to by the parties. In particular, the Respondant's appellate counsel denied (App. M, infra, p. 42A)(PC p 19) that the Respondant was subject to OEO Memo 23-A. The undisputed fact is that the Respondant's trial attorney admitted (App. G, infra, p. 18A)(R p 9) the Petitioner's contention (App. F, infra, p. 15A)(R pp. 4A-5A A11.6) that Respondant is subject to OEO Memo 23-A.

Certiorari should be granted to dispell any lingering doubt about admissions in the pleadings and stipulations, so long as they are fairly entered into and not altered or withdrawn by amendment, being necessarily conclusive as to the facts admitted. Cf., Santobello v. New York, 404 U.S. 257 (1971) (Burger,C.J.).

The opinion of the court of appeals was clearly in error. The record reveals that these errors are gross and obvious, coming close to the boundary of arbitrary action, violative of the Petitioner's

right to due process as guaranteed by the Fourteenth Amendment and, therefore, appropriately rectified by this Court. Roberts v. New York, 295 U.S. 264 (1934). Accordingly, the errors committed in the court below are not mere errors in construing a state constitution, statute, or common law of the state. See, West v. Louisiana, 194 U.S. 258 (1904).

So long as Respondant's regulations remained operative, the Respondant's Board of Directors denied themselves the authority to exercise the discretion delegated to the Grievance Committee. United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954). It is theoretically possible for either the Office of Economic Opportunity (OEO) or the Board of Directors of Respondant to amend or revoke the regulations defining the Grievance Committee's authority. But they have not done so. So long as the Office of Economic Opportunity (OEO) and Respondant's regulations regarding employee grievances remain in force, the Respondant's Board of Directors is bound by the Grievance Committee's decision that the Petitioner be reinstated for at least two weeks. United States v. Nixon, 418 U.S. 683, 695 (1974). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even when the internal procedures are possibly more rigorous than otherwise would be required." Morton v. Ruiz, 415 U.S. 199, 235 (1974).

Since the pleadings and stipulations reveal that the Respondant did not permit the Petitioner to return to work (App. G., infra, p.19A)(R p 9, All.7), despite the ruling of the Grievance Committee entitling her to do so, the finding of the court of appeals, that the Respondant did comply with its grievance procedures, contradicts the pleadings and stipulations of the parties and, therefore, is a clear, obvious and gross error. Roberts v. New York, 295 U.S. 264 (1934). The undisputed facts clearly show Petitioner did have the substantive right to retain her employment for at least the two weeks specified by the Grievance Committee. Hence, the Petitioner's dismissal fell substantially short of the requirements of the applicable regulations, and, therefore, her dismissal was illegal and of no effect. Vitarelli v. Seaton, 359 U.S. 534,545 (1959).

The primary holding in the court below was that the Petitioner's contract with the Respondant was terminable by either party at will. Under this holding the court below ruled that the outcome of the Petitioner's grievance hearing, whereby the Petitioner was entitled to reinstatment for a period of at least two weeks, had no legal effect.

The following excerpts from the opinion of the court of appeals are quoted below and revealed by the record to be entirely unsupported.

1. "Although alleged by plaintiff, there is nothing in the record to indicate that the dismissal procedure was incorporated into her contract. Without some such provision, defendant had the right to dismiss Mrs. George at any time and for any reason." (Italics Added)(App. A, infra, p. 6A).

The statement of the court of appeals, quoted above, is an independent finding of fact which contradicts the record. The complaint alleges (App. F, infra, p. 14A) (R p 4) and the answer admits (App. G, infra, p. 18A)(R p 8) that Petitioner's employment was in accordance with and subject to Respondant's applicable personnel policies. The complaint alleges (App.F, infra, p. 15A)(R pp. 4-5) and the answer admits (App. G, infra, p. 18A) (R p 9, All. 6) that Respondant is a delegate agency of the Federal Office of Economic Opportunity and subject to OEO Memo 23-A, mandating provisions for review of personnel actions by the governing body, and this fact was further stipulated to in the pre-trial order (App. H, infra, p. 22A) (R p 40), wherein the parties also stipulated that Respondant's employment was "subject to Respondant's applicable personnel policies and procedures" (App. K, infra, p. 31A) (R p 32, Stipulation "b") (Italics Added). Hence, the Court of Appeal's finding, that there is nothing in the record to indicate that the dismissal procedure was incorporated into the Petitioner's contract, is clearly and obviously erroneous.

2. ".... the record shows that defendant in fact did comply with its policies

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and procedures. These provide that '[D]ismissal of Center Directors is at the discretion of the Executive Director and such actions will be taken after disciplinary action as outlined in Personnel Policies has been completed'." (App. A, infra, p 6A).

The record is clear that as to Petitioner's grievance, Respondant did comply with its written policies and procedures until just prior to the conclusion of the grievance process; the record is equally clear that from that point forward Petitioner was arbitrarily deprived of all rights that the parties had stipulated that she was given under said policies and procedures. This fact is revealed by the sentence from the policies and procedures omitted from its opinion by the court of appeals, but which immediately follows the final sentence quoted above by said court, and which reads as follows:

> "The vacated position will be held open fifteen days until the period of appeal has lapsed or some disposition of the case made by the grievance committee. (Emphasis Added)(App. H, infra, p. 22A)(R p 40, No. 7).

The parties stipulated that Respondant had to provide for review of personnel actions by its Board of Directors or a

committee appointed by Respondant, and Respondant elected to provide for review by a grievance committee (App. H, infra, p. 22A)(R p 40). The parties stipulated that the Grievance Committee made its report on August 28, 1968 (App. H, infra, p. 23A)(R p 41) and that the result of the grievance hearing was set forth in the Grievance Committee's report as follows:

> "[T]he Grievance Committee recommends that Mrs. George be reinstated as Zebulon's Center Director for two weeks, on a probation basis..." (App. I, infra, pp. 27A-28A)(R p 40-41, Stipulation "n"; R p 42, Stipulation "r", Ex. 47, Ex. pp. 164-165).

Respondant admitted that it did not allow Petitioner to be reinstated or resume her duties after August 12, 1968 (App. G, infra, p. 19A)(R p 9, A11.7), and the parties stipulated that Petitioner received no compensation from Respondant since August 12, 1968 (App. H, infra, p. 26A)(R p 43). After hearing the evidence of the parties in the second portion of the trial, the trial judge found that it was reasonably probable that had Petitioner been reinstated for the two weeks her employment in that position would have continued to this day (App.E, infra, pp. 12A-13A)(R p 80) Hence, the ommission by the court of appeals of a fact, which contradicts its independent

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finding of fact, does not make the omission any less gross or obvious.

3. "From the foregoing it is clear that the Executive Director had the authority in his discretion to dismiss Plaintiff subject to her right to appeal to the Grievance Committee. Moreover, nothing in the personnel procedures can be construed to require the Board of Directors to accept the Committee's recommendation. While Plaintiff may have been entitled to certain procedural safeguards, which she was afforded, she did not have a substantive right to retain her employment." (App. A, infra, p. 7A).

As heretofore stated, the personnel policies and procedures stated that disposition of Petitioner's grievance was to be made by the Grievance Committee, not by the full Board of Directors(App. H, infra, p. 22A)(R p 40). Furthermore, the parties stipulated that the personnel policies and procedures were "based on OEO Memo 23-A... and hopefully encompass(es) all federal requirements given therein..." and that Respondant's "...Board of Directors is directly responsible to the Office of Economic Opportunity for the competent execution of the program of Wake County Opportunities, Inc. and in accordance with the By-Laws, OEO Memos, federally proved components and their conditions as accepted by the Board of Directors" (App. K, infra, pp. 34A-35A) (R p 35).

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The court of appeals' independent finding of fact that the Respondant's Board of Directors could "disregard" the ruling of the Grievance Committee is tautamount to contradicting the admissions and stipulations of the parties enumerated hereinabove; namely, that the Respondant is subject to OEO Memo 23-A and that the Grievance Committee ruled in the Petitioner's favor. The term "subject to" means "[l]iable, subordinate, subservient, inferior, obedient to; governed or affected by." BLACKS LAW DICTIONARY 1594 (rev. 4th ed. 1968). The Respondant admitted in his answer and stipulations to be "subject to" OEO Memo 23-A. Therefore, the court of appeals is barred by the Fourteenth Amendment from making the independent finding of fact that the Respondant's Board of Directors may "disregard" the ruling of the Grievance Committee and, therefore, not be "subject to" that ruling.

The undisputed facts clearly show that the Petitioner did have the substantive right to retain her employment for at least two weeks specified by the Grievance Committee. So long as Respondant's regulations remained operative and so long as discretion was delegated to the Grievance Committee, the Respondant's Board of Directors denied themselves the authority to dismiss the Petitioner without first permitting her the opportunity to return to work for at least two weeks in order to reaccess her relationship with Respondant's Executive Director. United States ex rel. Accardi

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v. Shaughnessy, 347 U.S. 260 (1954).

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted. Since the question of law raised in this petition should be answered in favor of the Petitioner, this Court may appropriately enter a summary reversal of the judgment of the court below and reinstate the judgment of the trial court.

Respectfully submitted,

MARVIN SCHILLER
Suite 1016
Insurance Building
336 Fayetteville Street
Raleigh, North Carolina
27602

Attorney for Petitioner

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APPENDIX A

OPINION OF COURT OF APPEALS

GLORIA V. GEORGE

v

WAKE COUNTY OPPORTUNIES, INC.

No. 7510SC187

(Filed 6 August 1975)

Master and Servant § 10 - action for wrongful discharge

Plaintiff's discharge as director of an antipoverty agency was not wrongful where her contract of employment was for an indefinite period of time and contained no procedural requirements for dismissal; even if the parties contemplated at the time of hiring that dismissal would be governed by established personnel procedures or by procedural safeguards required by the Office of Economic Opportunity, such procedures were followed and defendant's board of directors thereafter properly terminated plaintiff's employment notwithstanding the grievance committee had recommended that she be reinstated.

Appeal by defendant from McLelland, Judge. Judgment entered 11 October 1974 in Superior Court, WAKE County. Heard in the Court of Appeals 29 May 1975.

Plaintiff instituted this action on 16 August 1971 seeking damages in the amount

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of lost wages from 12 August 1968, the date of defendant's alleged wrongful termination of her employment as Director of the Little River Community Action Center in Zebulon. She also sought restoration to her former position.

In her complaint plaintiff alleged that on 21 September 1967 she entered into a contract of employment with defendant, an antipoverty agency, at an annual salary of $6,000.00. On 26 July 1968 defendant's Executive Director requested plaintiff's resignation as a center director and on 12 August 1968 he ordered her not to return to the center. Plaintiff then initiated grievance proceedings pursuant to the agency's written personnel policies and procedures. These procedures were adopted in compliance with Community Action Memo 23-A, issued by the Office of Economic Opportunity, which reads in part as follows:

> "Employee grievances shall be given prompt and fair attention. Grantee and delegate agencies shall make provision for review of personal actions by the governing body or a committee appointed by the governing body in any case in which there is a claim of unfair treatment or of dismissal without cause."

Plaintiff further alleges that a Grievance Committee appointed by defendant found in her favor, but on 28 August 1968 defendant's Board of Directors voted to take no action on the committee's report until the Executive Director returned to work. Meanwhile, on 10 September 1968, the Board met and voted to terminate plaintiff's employment. She alleged that the initial request for her resignation was without cause and that she has been denied a hearing of her grievance in accordance with defendant's rules, regulations, procedures and by-laws.

Defendant in its answer admitted that plaintiff was employed and discharged as alleged but denied all other material allegations in the complaint. Defendant alleged that plaintiff's employment was for an indefinite term and was subject to written policies of the corporation including

> "the provisions of Section III 3 (2) 'Dismissal of Center Directors is at the discretion of the Executive Director and such action will be taken after disciplinary action as outlined in Personnel Policies has been completed'; and the provisions of Personnel Policies Section V 6 F: 'The Executive Director is authorized to take appropriate action where an employee's work or conduct make it necessary. Suspension from the job or dismissal of an employee is left to the

discretion of the Executive Director.'"

Defendant further alleged that on 28 June 1968 plaintiff tendered her resignation, which was accepted subject to her request to appear before the Executive Committee. Plaintiff appeared before the Executive Committee and was granted hearings before the Board of Directors and the Grievance Committee. The action of the Executive Director dismissing plaintiff was approved by both the Executive Committee and the Board. Therefore, defendant alleged, it has fully complied with its established procedures and by-laws.

Both sides moved for summary judgment, stipulating that except for damages there was no material issue of fact to be determined and submitting the fruits of extensive discovery which were contained in the pretrial order. The court announced that it was granting plaintiff's motion, and a hearing was held on the issue of damages.

Plaintiff testified that she had attemted to find other employment but except for a brief period as a substitute teacher, was unable to do so because of her having been discharged by defendent. The court found that plaintiff was not discharged in accordance with procedural requirements of defendant corporation, was entitled to reinstatement, had made reasonable efforts

to mitigate damages, and probably would have continued in her position to this day had she not been discharged. From the judgment awarding plaintiff $43,364. 90 and ordering her reinstated, defendant appealed to this Court.

Davis, Davis & Debman, by F. Leary Davis, Jr., and W. Thurston Debnam, Jr., for plaintiff appellee.

Kimzey, Mackie & Smith, by James M. Kimzey, for defendant appellant.

ARNOLD, Judge

Defendant contends that the trial court erred in finding that plaintiff's discharge was wrongful and in granting her motion for summary judgment. The voluminous materials offered in support of the motion do not reveal the existence of any genuine issues of material fact. The question then is whether plaintiff was entitled to judgment as a matter of law.

Defendant argues (1) that plaintiff's contract of employment was for an indefinite period and therefore was terminable at will, and (2) that, even if its dismissal procedures are considered to have been made part of the contract, defendant has complied with them. Under either view, defendant argues, judgment for plaintiff was contrary to law and must be reversed. We agree.

It is well settled in North Carolina

that a contract of employment for an indefinite period of time is terminable by either party at will. Scott v. Burlington Mills, 245 N.C. 100, 95 S.E. 2d 273 (1956); Howell v Credit Corp., 238 N.C. 442, 78 S.E. 2d 146 (1953). Although alleged by plaintiff, there is nothing in the record to indicate that the dismissal procedure was incorporated into her contract. Without some such provision, defendant had the right to dismiss Mrs. George at any time and for any reason.

Assuming, however, that the parties did contemplate at the time of hiring that dismissal would be governed by established personnel procedures, or that a failure to follow procedural safeguards required by the Office of Economic Opportunity states a cause of action, the record shows that defendant in fact did comply with its written policies and procedures. These provide that "[d]ismissal of Center Directors is at the discretion of the Executive Director and such action will be taken after disciplinary action as outlined in Personnel Policies has been completed." Under Personnel Policies the employee must be given two weeks' notice of appeal as provided under Grievances. Under Grievances the employee may appeal within fifteen days of dismissal to the Grievance Committee of the Board of Directors.

Plaintiff's exhibits show that on 26 July 1968 she was given notice by defendant's Executive Director that her employment would terminate as of 12 August 1968. By letter dated 9 August 1968 plaintiff

requested a grievance hearing, which was held on 26 August 1968. The Grievance Committee recommended that Mrs. George be reinstated for a two-week probationary period during which her relationship with the Exective Director would be reaccessed and the Executive Committee would make a final disposition. On 28 August 1968 the Board of Directors decided to postpone action on the Grievance Committee's report. On 10 September 1968 the Board voted to terminate plaintiff's employment.

From the foregoing it is clear that the Executive Director had the authority in his discretion to dismiss plaintiff subject to her right to appeal to the Grievance Committee. Moreover, nothing in the personnel procedures can be construed to require the Board of Directors to accept the Committee's recommendation. While plaintiff may have been entitled to certain procedural safeguards, which she was afforded, she did not have a substantive right to retain her employment.

The record simply does not support the trial court's holding that plaintiff's employment was wrongfully terminated. The judgment in her favor must be

Reversed.

APPENDIX B

NO. 62PC TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

Fall Term 1975

****

GLORIA V. GEORGE	)ORDER DENYING
	)PETITION FOR
v	)WRIT OF CERTI-
WAKE COUNTY OPPORTUNITIES, INC.	)ORARI
	)(7510SC187)

****

This cause came on to be considered upon the petition of the plaintiff for writ of certiorari to review the decision of the North Carolina Court of Appeals; upon consideration whereof, it is adjudged by the Court here, that the petition be denied and that it be so certified to the said North Carolina Court of Appeals to the intent its decision be affirmed;

Witness my hand and the seal of the Supreme Court, this the 7th day of October, 1975.

ADRIAN J. NEWTON
Clerk of the Supreme Court of
North Carolina

By: _____

cc: Davis & Davis, Attorneys at Law
Kimzey, Mackie & Smith, Attorneys at Law

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APPENDIX C

SUPREME COURT OF NORTH CAROLINA
ADRIAN J. NEWTON,Clerk
Area Code 919 829-3723
P.O. Box 2170
Raleigh, North Carolina 27602

Mrs. Peggy Byrd
Mrs. DeJuan W. Weaver
Deputy Clerks

John R. Morgan
Administrative Asst.
Assistant Clerk

December 5, 1975

Davis & Davis
Attorneys at Law
Box 38
Zebulon, North Carolina 27597

Re: George v. Wake County Opportunities
Number 62PC-Fall Term 1975

Gentlemen:

Motion for reconsideration of petition for discretionary review under GS 7A-31 is filed with the following order:

> "Denied by order of the Court in Conference this the 2nd day of December 1975. Exum, J., for the Court."

Yours very truly,

Adrian J. Newton
Clerk of Supreme Court

AJN:pb
cc: Kimzey, Mackie & Smith, Attorneys at Law

APPENDIX D

SUPREME COURT of the UNITED STATES

No. A-747

GLORIA V. GEORGE,
Petitioner

v.

WAKE COUNTY OPPORTUNITIES, INC.

ORDER EXTENDING TIME TO FILE PETITION
FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s), It Is ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 31, 1976.

/S/ Warren E. Burger
Chief Justice of the
United States

Dated this 4

day of March, 1976

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APPENDIX E

JUDGMENT OF THE TRIAL COURT

JUDGMENT (Filed October 11, 1974)

THIS CAUSE being regularly docketed and coming on to be heard, and being heard, at the October 7, 1974, Civil Term of Wake County Superior Court, before the Honorable D. Marsh McLelland, Judge Presiding at said term, upon motions for Summary Judgment of the defendant and plaintiff, respectively, filed in this cause, the parties stipulating that there existed no genuine issue as to any material fact as to liability and that the Court should decide the issue of liability based upon the pleadings and affidavits, together with the other documents filed herein including the Pretrial Order and exhibits submitted therewith; and the parties further stipulating that should summary judgment as to liability be granted in favor of plaintiff, the parties would immediately be heard and allowed to present evidence as to the amount of damages to be granted; plaintiff appearing by her attorneys F. Leary Davis, Jr., and W. Thurston Debnam, Jr., of the firm of Davis, Davis & Debnam, and defendant appearing by its attorney, R. Mayne Albright; and upon consideration of the records and files in this matter, the pleadings, the affidavits, the Pretrail Order and exhibits filed therewith, and all other papers and documents filed by the parties herein, and the oral argument of counsel for the respective parties and the briefs filed by counsel, it appearing to the

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Court that there is no genuine issue as to any material fact except for the issue of the amount of damages for which judgment should be granted, the Court finds that plaintiff is entitled to a judgment against defendant as a matter of law;

Upon announcing its decision allowing plaintiff's Motion for Summary Judgment as to liability, the cause coming on for trial as to damages before the Court sitting without a jury, and the Court having heard the testimony and having examined the proofs and stipulations offered by the parties, the Court, from said stipulations and evidence and undisputed facts determinative of plaintiff's motion for summary judgment, makes the following

FINDINGS:

1. That Plaintiff was employed by defendant in the status of director of Little River Community Action Center at the time of her discharge effective August 12, 1968;

2. That she was discharged not in accordance with procedural requirements of the defendant corporation;

3. That she is presently entitled to reinstatement in that position;

4. That she has made reasonable efforts to mitigate damages following her discharge by obtaining comparable employment in the same locality and has earned through such employment the sum of $1,400.00;

5. That it is reasonably probably that plaintiff's employment in the posi-

tion she held would have continued to this day but for her wrongful discharge;

THEREFORE, THE COURT CONCLUDES that plaintiff is entitled to recover the total wages she would have received in the position of center director to this date, less the sum of $1,400.00, and to compensation at the current scale paid center directors after this date until lawful termination of her employment.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED BY THE COURT:

1. That the Motion for Summary Judgment of plaintiff be and the same is hereby allowed as to liability.

2. That plaintiff have judgment against the defendant in the sum of $43,364.90 with interest thereon from the date hereof until paid.

3. That defendant reinstate plaintiff.

4. That the defendant pay the costs of this action.

This 11th day of October, 1974.

s/ D. MARSH McLELLAND
Judge Presiding

APPENDIX F

PETITIONER'S COMPLAINT

COMPLAINT (Filed August 16, 1971)

The plaintiff, complaining of the defendant, alleges:

1. That the plaintiff is a citizen and resident of Wake County, North Carolina.

2. That the defendant, Wake County Opportunities, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of North Carolina.

3. That on or about September 21, 1967, in accordance with defendant corporation's written personnel policies and procedures, plaintiff and defendant corporation entered into a contract under which plaintiff was employed to serve as Director of the Little River Community Action Center in Zebulon, Wake County, North Carolina, at an annual wage of $6,000.00, payable monthly, said wage to increase as defendant's applicable salary scale for center directors increased.

4. That the plaintiff fully performed the duties expected of and assigned to her by defendant corporation.

5. That by letter dated July 26, 1968, the Executive Director of defendant corporation requested plaintiff's resignation

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as center director; that the reasons stated by defendant's Executive Director for requesting plaintiff's resignation were unfounded, the request was unfair and without cause, and said action was attempted in violation of defendant corporation's personnel policies and procedures; that defendant refused to allow a hearing concerning its request for plaintiff's resignation to plaintiff or to the local representatives of the center at which she worked, and on August 12, 1968, defendant's Executive Director ordered plaintiff not to return to her center; and that plaintiff therefore initiated grievance proceedings as provided by the personnel policies and procedures of the defendant corporation.

6. That as a grantee and delegate agency of the Office of Economic Opportunity defendant was subject to the following regulation:

"Employee grievances. Employee grievances shall be given prompt and fair consideration. Grantee and delegate agencies shall make provision for review of personnel actions by the governing body or a committee appointed by the governing body in any case in which there is a claim of unfair treatment or of dismissal without cause."

7. That defendant did not allow plaintiff to have a court reporter prepare a transcript of the grievance proceeding held before a grievance committee appointed by defendant, but the outcome of said grievance proceedings was in plaintiff's favor, returning her to work. Despite the favorable outcome

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of said grievance proceedings, defendant has not allowed plaintiff to resume her duties.

8. That the report of defendant's grievance committee was given defendant on August 28, 1968, at which time defendant adopted a resolution that its Board of Directors take no action on the report of the grievance committee until defendant's Executive Director returned to work. Said Executive Director returned to work on or about October 9, 1969.

9. That certain directors of the defendant corporation unfairly, wrongfully, and unlawfully attempted to discharge plaintiff at a secret meeting of the said directors held on or about September 10, 1968; said attempted discharge constituted a denial of plaintiff's right to a grievance hearing, plaintiff not being given the right to be heard at said meeting and evidence presented at the prior grievance proceeding not being made available to defendant's directors attending said meeting. Said directors breached the responsibility of their office by not becoming fully acquainted with all relevant facts of plaintiff's case before attempting to overrule the decision of defendant's grievance committee.

10. That said attempted discharge was in bad faith, unfair, arbitrary, capricious, discriminatory, wrongful, unlawful, and invalid in that said September 10, 1968, meeting of defendant's Board of Directors was not called or conducted in accordance with defendant's rules, regulations, procedures and by-laws;

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that the discharge was attempted in order to prevent plaintiff from being heard before defendant's Board of Directors; and Directors of defendant corporation were not adequately informed to make a decision concerning plaintiff's employment.

11. That plaintiff has repeatedly sought a hearing before defendant, but defendant's representatives have refused to allow plaintiff to be heard concerning her employment before defendant's Board of Directors.

12. That plaintiff has remained ready, able and willing to continue to perform the duties of her position with defendant and is entitled to be allowed to return to work with defendant and to recover the salary she would have received from August 12, 1968, until she returns to work with defendant.

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APPENDIX G

RESPONDANT'S ANSWER

ANSWER (Filed October 18, 1971)

The Defendant, answering the complaint, says:

1. That the allegations of Paragraph 1 are admitted.

2. That the allegations of Paragraph 2 are admitted.

3. It is admitted that on or about September 1, 1967 Plaintiff was employed by the Defendant Corporation as Director of the Little River Community Action Center in Zebulon, North Carolina, for an indefinite term, and at a monthly salary of $500.00 per month, subject to Defendant's applicable personnel policies, but except as admitted, the allegations of Paragraph 3 are denied.

4. That the allegations of Paragraph 4 are denied.

5. That it is admitted that by letter dated July 26, 1968, the Executive Director of the Defendant Corporation requested Plaintiff's resignation and notified Plaintiff that the termination date for her employment be not later than August 12, 1968, and that thereafter Plaintiff initiated grievance proceedings, but except as admitted, the allegations of Paragraph 5 are denied.

6. That the allegations of Paragraph 6 are admitted.

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7. It is admitted that the Defendant has not allowed Plaintiff to resume her duties after August 12, 1968, but except as admitted, the allegations of Paragraph 7 are denied.

8. That it is admitted that following the Plaintiff's appearance before the Grievance Committee, a report of the Hearing was given to the Defendant's Board of Directors and that the said Board delayed action, but except as admitted the allegations of Paragraph 8 are denied.

9. That the allegations of Paragraph 9 are denied.

10. That the allegations of Paragraph 10 are denied the true facts being as stated in Defendant's FURTHER ANSWER hereto and not otherwise.

11. That the allegations of Paragraph 11 are denied the true facts being as stated in Defendant's FURTHER ANSWER hereto and not otherwise.

12. That the allegations of Paragraph 12 are denied.

AND FOR A FURTHER ANSWER, Defendant says:

1. That the employment of the Plaintiff by the Defendant in September 1967 was without any written contract and without any agreement as to any definite term of employment, but subject to the written Personnel Policies of the Defendant Corporation including the provisions of Section III 3 (2) "Dismissal of Center Directors is at the discretion of the Executive Director and such action will be taken after disciplinary action as

outlined in Personnel Policies has been completed."; and the provisions of Personnel Policies Section V6 F: "The Executive Director is authorized to take appropriate action where an employee's work or conduct make it necessary. Suspension from the job or dismissal of an employee is left to the discretion of the Executive Director."

2. That by letter of July 26, 1968, Plaintiff was given notice by Defendant's Executive Director that her employment would terminate as of the close of business on August 12, 1968, and Plaintiff was paid in full through said date.

3. That by letter of June 28, 1968, Plaintiff tendered her resignation to Defendant, which resignation was accepted subject to the Plaintiff's request to appear before the Executive Committee. That subsequent to such appearance before the Executive Committee on July 16, 1968, Plaintiff, on July 24, 1968, was also granted a hearing before the Defendant's Board of Directors, and on August 12, 1968 Plaintiff was also granted a hearing before a duly constituted Grievance Committee, whose findings were reported to the Board of Directors on August 28, 1968.

4. That the action of dismissal by the Executive Director was subsequently affirmed and approved by both the Executive Committee and the Board of Directors, and such dismissal and the Grievance Committee hearing granted to Plaintiff and other actions of the Defendant Corporation and its officers and governing Boards

and Committee were in full compliance with the established Procedures and By-Laws of Defendant Corporation, and Plaintiff was in no way improperly or unlawfully deprived of any employment rights or other rights under said policies or procedures or otherwise.

improvement has been noted, a thorough review of the case will be made by the Executive Director's review, the employee may be asked to resign or his employment will be terminated within two weeks of the date of the review.

7. Grievances: In the event of dismissal an employee has the right of appeal, in writing, within fifteen days of dismissal to the Grievance Committee of the Board of Directors of Wake County Opportunities. The vacated position will be held open fifteen days until the period of appeal has lapsed or some disposition of the case made by the Grievance Committee.

Employee grievances shall be given prompt and fair consideration in any case in which there is a claim of unfair treatment or of dismissal without cause.

(1) The Grievance Committee of Wake County Opportunities will be a special committee appointed by the President of the Board of Directors as need demands. The Committee shall have five members, one of whom shall be selected by the employee making the appeal.

All records related to the dismissal of any employee will be made available to the Grievance Committee for assessment.

From OEO Memo No. 23-A dated August 26, 1966:

Employee grievances. Employee grievances

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shall be given prompt and fair consideration. Grantee and delegate agencies shall make provision for review of personnel actions by the governing body or a committee appointed by the governing body in any case in which there is a claim of unfair treatment or of dismissal without cause.

(n) A Grievance Committee consisting of Robert J. Marley, Joseph Guess, Millie D. Veasey, Lee Roy Singleton, and Seby Jones (Seby B. Jones being selected by plaintiff in accordance with Section V 7 (1) of defendant's personnel policies and procedures) met on August 26, 1968, heard evidence, and made a report to the August 28, 1968, meeting of defendant's Board of D rectors. PLAINTIFF'S EXHIBIT 47. The Board of Directors passed a motion "That the Board take no action on the report of the Grievance Committee concerning the status of Mrs. George until such time as the Investigations Committee has completed its report and Mr. Toton, the Executive Director, has returned to work since this report deals directly with the Executive Director and the Director of the Zebulon Community Center."

(o) On September 10, 1968 the Defendant's Board of Directors, according to its Minutes, adopted the following Motion: "Mr. Guess moved and Mr. Richardson seconded that Mrs. George and Mrs. Morris' employment be terminated. A vote was 10 favoring dismissal and 3 opposed."

Defendant contends that on September 11, 1968, Mr. William P. Freitag wrote a letter to the Plaintiff, as follows: "As President of Wake County Opportunities, Inc., Board of Directors, I am writing this letter to

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inform you of the action taken by the Board at the September 10, 1968 meeting concerning your employment. A Motion was made by Mr. Joseph Guess as follows: "Mr. Guess moved and Mr.Richardson seconded that Mrs. George and Mrs. Morris' employment be terminated. A vote was 10 favoring dismissal and 3 opposed." DEFENDANT'S EXHIBIT 4. Plaintiff contends that if said letter was ever mailed, it was not received by her.

The alleged result of the above Board action was entered on the Defendant's "Personnel Action Form" by Eugene Toten as follows: "Dismissal -- See document for clarification, decision upheld by Executive Committee in July and August final action of Board 9-10-68, EVT". DEFENDANT'S EXHIBIT 5.

Plaintiff contends that any action taken at said September 10, 1968, meeting was improper and invalid.

(p) Eugene Toton returned to work as defendant's Executive Director following a meeting of defendant's Board of Directors on October 9, 1968, PLAINTIFF'S EXHIBIT 36, and continued in that position until May 30, 1969; Dorothy N. Allen became defendant's acting Executive Director on June 1, 1969.

(q) Subsequently to September 10, 1968, plaintiff requested to be heard before the defendant, PLAINTIFF'S EXHIBIT 37, 56, and forwarded information to defendant on July 1, 1969. PLAINTIFF'S EXHIBIT 49.

(r) The report of defendant's Grievance Committee which heard the grievance of

plaintiff is shown as PLAINTIFF'S EXHIBIT 47.

(s) The pay scale for position of Center Director since September 21, 1967, with dates reflecting amounts of increases, is as follows:

> $6,180.00 per year or $515,00 per month as of September 21, 1967; $531.00 per month as of August 12, 1968.

In succeeding years salary of Center Directors was increased approximately 5% per year.

(t) As a part of its function of informing its directors, it was the practice of defendant to mail to each director a copy of all minutes of meetings of its Board of Directors and of its Executive Committee.

(u) The minutes and report listed as PLAINTIFF'S EXHIBITS 5, 10, 15, 18, 19, 25, 33, 34, 36, 38, 47, and 54, represent each and every meeting of the Board of Directors, Executive Committee, and Grievance Committee, or any other committee or sub-committee of defendant charged with authority and responsibility for the employment or discharge of employees, at which the employment status of plaintiff was considered, and said exhibits constitute the complete and official record of said meetings, to the best of the knowledge and belief of Defendant. Plaintiff professes no knowledge as to other meetings and is unable to form a belief as to whether or not other meetings were held.

(v) Plaintiff has received no compensation from defendant since August 12, 1968.

(w) Requirments of the Office of Economic Opportunity concerning termination of employment, to which defendant was subject, are listed in PLAINTIFF'S EXHIBIT 55.

4. The following is a list of all known exhibits the plaintiff may offer at trial:

Exhibit 1, Letter dated June 28, 1968, from plaintiff to defendant.

Exhibit 2. Letter dated July 2, 1968, to plaintiff from Eugene F. Schulle, Alfred T. Baker, Jr., and Mary S. Austin.

Exhibit 3. Letter dated July 3, 1968, to defendant's Middle Creek Center from Elizabeth Berryhill, Norma Brownad, Allen Getson, and Gloria Clark.

Exhibit 4. Letter dated July 3, 1968, from defendant's Little River Community Action Center Local Advisory Committee to defendant's Executive Committee.

Exhibit 5. Minutes of July 9, 1968, meeting of the defendant's Executive Committee.

APPENDIX I

PLAINTIFF'S PRE-TRIAL EXHIBIT 47

The Grievance Committee in session on Monday, August 26, 1968, met to consider Mrs. Gloria George's grievance that she had been dismissed unjustly and without cause.

1. The Committee heard several distinguished citizens from the Zebulon Community commend her work and the need for her continued employment. There was complete agreement that Zebulon was making great progress through the assistance of Wake Opportunities, Inc.

2. The Board of Directors of Wake Opportunities establish policy and approves programs. The Board has employed an Executive Director to administer its policies and program. The Executive Director has and should have administrative control over the staff.

3. The Grievance Committee unanimously expressed grave concern with the lack of communication between Mrs. George and the Executive Director. Neither the central office nor Mrs. George should have allowed differences to deteriate without much more effort at setting differences before dismissed. Reasons for dismissal should be clear and obvious to both parties and dismissal occur only after all resources at reconsiling differences had been exhausted.

Since there was no communication between Mrs. George and the Executive Director during the beginning date of her probationary period and the date of request for her resignation, the Grievance Committee recommends that Mrs. George be reinstated as Zebulon Center Director for two weeks, on a probation basis, to reaccess her relationship with the Executive Director. At such time the Executive Committee shall determine that the employer-employee is or is not satisfactory and further determine final disposition.

Robert J. Marley, Chairman Grievance Committee
Mr. Joseph Guess
Mrs. Millie D. Veasey
Mr. Lee Roy Singleton
Mr. Seby Jones

APPENDIX J

PETITIONER'S PETITION FOR A

WRIT OF CERTIORARI

IN NORTH CAROLINA SUPREME COURT

In researching the power of the Court of Appeals to enter a judgment upon the circumstances involved in the instant case following denial of plaintiff's petition for discretionary review, counsel for petitioner became aware that, despite the fact this case was neither prosecuted nor defended upon Constitutional grounds, the decision of the Court of Appeals unexpectedly gave rise to substantial questions under the Constitutions of the United States and of this State involving both denial of due process of law to plaintiff by the Court of Appeals and the supremacy clause of the United States Constitution. The plaintiff could not fairly have anticipated the unconstitutional action of the Court of Appeals and initially overlooked said grounds as bases of appeal as a matter of right under GS 7A-30(1). Counsel for plaintiff has lost the right to appeal the judgment of the Court of Appeals as a matter of right by failure to take timely action and intends to file a petition for certiorari pursuant to the provisions of Rule 21 of the North Carolina Rules of Appellate Procedure without unreasonable delay. Counsel for plaintiff is undergoing a change in professional relationships which shall necessitate his associating other counsel for further proceedings in this action, and prays

the court for leave to supplement this motion upon association of said counsel and filing of the aforesaid petition for certiorari as a substitute for appeal as a matter of right.

APPENDIX K

STIPULATIONS

(b) On or about September 21, 1967, plaintiff was employed by the defendant as Director of the Little River Community Action Center in Zebulon, North Carolina, subject to defendant's applicable salary paid to center directors.

(c) On or about May 29, 1968, Eugene Toton was employed by the defendant as its Executive Director, subject to defendant's applicable personnel policies and procedures.

(d) By letter dated June 28, PLAINTIFF'S EXHIBIT 1, plaintiff tendered her resignation to defendant.

(e) Following a request of the Local Advisory Council of the Little River Community Action Center that defendant honor the withdrawal of plaintiff's resignation, said withdrawal being unanimously requested by said council, PLAINTIFF'S EXHIBIT 5, and plaintiff's withdrawal of her resignation prior to its acceptance pursuant to said request, defendant's Executive Committee informed plaintiff by letter dated July 10, 1968, PLAINTIFF'S EXHIBIT 6, that "the resignation be accepted subject to Mrs. George's request to the Executive Committee before July 15, 1968, for consideration of her withdrawal and, if the request was not forthcoming before July 15, the resignation would be accepted."

(f) By letter dated July 11, 1968, PLAINTIFF'S EXHIBIT 7, plaintiff requested the opportunity to appear before the Executive Committee of defendant as provided by its resolution set forth in PLAINTIFF'S EXHIBIT 6 for further consideration of the withdrawal of her resignation.

(g) Plaintiff was heard by defendant's Executive Committee on July 16, 1968, at which meeting the Executive Committee adopted the following resolution:

> "The committee will go on record stating that the withdrawal of Mrs. George's resignation be accepted with the stipulation that more positive interaction be developed between Little River Community Action Center and Wake County Opportunities, Inc.
>
> The basis for the Executive Committee recommendation emanates from the problems encountered by the submitting of Mrs. George's resignation and her withdrawal of same.
>
> This development is to take place no later than four (4) weeks."

(h) At the July 24, 1968, meeting of defendant's Board of Directors the action of the Executive Committee on July 16, 1968, approving the withdrawal of Mrs. George's resignation, was ratified.

(i) By letter of July 26, 1968, PLAINTIFF'S EXHIBIT 17, Eugene Toton gave

notice of termination of employment of plaintiff, specifying the grounds for termination of employment.

(j) The Local Advisory Committee Council of Little River Community Action Center requested defendant's Executive Director to discuss with said local council his decision to terminate plaintiff's employment. On August 3, 1968, the defendant's Executive Committee, according to its minutes, adopted the following resolution:

> "On this, the 3rd day of August, 1968, the Executive Committee hereby states that it is in full accord with the Executive Director's action in regard to the asking of the Zebulon Center Director's resignation (Mrs. Gloria George). Also, in the event that the aforementioned resignation is not forthcoming, that the Executive Committee will support the Executive Director in the dismissal of Mrs. George from Wake County Opportunities, Inc."

On August 6, 1968, the defendant's Executive Committee, according to its minutes, adopted the following resolution:

> "The Executive Committee reviewed all the facts in the case once again and reaffirmed the resolution of August 3, further stating that any and all communications would

be welcome and invited from Zebulon as to future activities of the Center."

PLAINTIFF'S EXHIBITS 22 AND 23

Plaintiff contends that the action of the Executive Committee in adopting the aforesaid resolution was improper and beyond the scope of its authority.

(k) By letter of August 9, 1968, PLAINTIFF'S EXHIBIT 21, plaintiff requested a grievance hearing.

(l) Defendant's President, PLAINTIFF'S EXHIBIT 22, and Vice President, PLAINTIFF'S EXHIBIT 23, each appointed grievance committees, having different memberships, but same common members, by respective letters dated August 12, 1968.

(m) The laws, regulations, guidelines and procedures shown by plaintiff's exhibits numbers 26, 44, 45, 46, and 55 of this order comprise defendant's authority and proceedures, and limitations thereon, for conduct of grievance proceedings in the instant case, and the following excerpts from said exhibits are the most relevant portions thereof:

From Wake County Opportunities, Inc., Written Policies and Procedures:

SECTION I. PURPOSE OF WAKE COUNTY OPPORTUNITIES, INC.

2. Nature of Statement of General and Personal Policies and Procedures:

This booklet is further based on OEO Memo 23A, dated August 26, 1966, Memo 50, dated October 17, 1966, and Memo

29, dated April 20, 1966, and hopefully encompasses all federal requirments given therein, and is subject to all subsequent OEO Memo changes as are given.

3. Lines of Authority Within Wake County Opportunities, Inc.

A. The Board of Directors of Wake County Opportunities, established policy and exercises complete authority over the corporation as outlined in the By-Laws. The Board of Directors is directly responsible to the Office of Economic Opportunity for the competent execution of the program of Wake County Opportunities, Inc., in accordance with the By-Law, OEO Memos, federally approved components and their condtions as accepted by the Board of Directors.

B. The Chairman of the Board of Directors is an intermediary to the Executive Committee and Board of Directors of Wake County Opportunities with duties and powers as outlined in the By-Laws as are authorized by the Board of Directors. The Chairman of the **********
****

APPENDIX L

PETITION FOR DISCRETIONARY REVIEW OF COURT OF APPEALS JUDGMENT UNDER GS SEC 7A-31 AND FOR WRIT OF CERTIORARI TO THE NORTH CAROLINA COURT OF APPEALS TO REVIEW ITS DECISION

TO: The Chief Justice and Associate Justices of the Supreme Court of North Carolina:

Now comes Gloria V. George, Plaintiff in the above-entitled matter, and hereby respectfully petitions the Supreme Court of North Carolina that the Court certify for discretionary review the judgment of the Court of Appeals heretofore entered in this action, a copy of said opinion being attached hereto, said opinion having reversed summary judgment rendered for plaintiff in the Superior Court of Wake County as to liability and the further judgment of said court after hearing evidence of damages, that plaintiff have judgment against defendant, Wake County Opportunities, Inc., in the sum of $43,364.90 and be reinstated to her position as an employee of defendant. Petitioner petitions the Court on the basis that:

I. FACTUAL BASIS FOR REVIEW

This is an action for reinstatment of plaintiff to active employment with defendant, Wake County Opportunities, Inc., a North Carolina non-profit corporation and delegate agency of the Federal Office of Economic Opportunity (OEO) and for damages for lost wages pending reinstatement.

In their pretrial order the parties stipulated that there existed two contested issues:

(1) Was the purported suspension and dismissal of the Plaintiff contrary to the provisions of the Policies and Procedures of the Defendant Corporation or the laws and regulations to which it was subject?

(2) If so, what, if any, is due to the Plaintiff in way of damages; and what is Plaintiff's employment status?

and stipulated in Court that as to the first issue no material fact was in dispute. Some of the undisputed facts established by stipulation, affidavit, and 201 pages of Exhibits delivered to the Court of Appeals pursuant to its Rule 19(j) were:

1. With respect to employment contracts, Plaintiff, Defendant, and Defendant's executive director and their actions were subject to and limited by OEO Memo 23-A, dated August 26, 1966, which reads:

   EMPLOYEE GRIEVANCES. Employee grievances shall be given prompt and fair consideration. Grantee and delegate agencies shall make provision for review of personnel actions by the governing body or a committee appointed by the governing body in any case in which there is a claim of unfair treatment or of dismissal without cause.

and by personnel policies and procedures in

bylaws providing in pertinent part:

F. DISCIPLINARY ACTION: The Executive Director is authorized to take appropriate action when an employee's work or conduct make it necessary. Suspension from the job or dismissal of an employee is left to the discretion of the Executive Director. Two weeks' notice of dismissal will be given. In the event of dismissal rights of appeal may be followed as outlined in Section 7 under Grievances.

> 7. GRIEVANCES: In the event of dismissal an employee has the right of appeal, in writing within fifteen days of dismissal to the Grievance Committee of the Board of Directors of Wake County Opportunities. The vacated position will be held open fifteen days until the period of appeal has lapsed or some DISPOSITION of the cases MADE BY THE GRIEVANCE COMMITTEE. (Emphasis Added)

No provision was made in personnel policies for reversal of Grievance Committee action by Defendant's full board of directors, which had dismissal powers under bylaws and personnel policies and procedures only over its executive Director, other dismissal powers being given only to the Executive Director and Grievance Committee.

2. Defendant's Executive Director purported to discharge Plaintiff on July 26, 1968, effective August 12, 1968.

3. With respect to termination of Plaintiff's employment and the conduct of grievance proceedings, the parties stipulated that Defendant was required to observe and provide the following safeguards before terminating Plaintiff's employment:

1. Written notification of grounds for termination.
2. Notification of applicable grievance procedures.
3. Opportunity to present grievance at hearing before properly constituted committee.
4. Right to counsel at own expense.
5. Access to pertinent documents relating to cause of dismissal.
6. Right to present witnesses at hearing on own behalf.
7. Right to cross examine witnesses in support of termination.

4. Plaintiff appealed her dismissal and was provided a grievance hearing at which she presented evidence. Plaintiff won her appeal and the Grievance Committee found Plaintiff should be reinstated for at least two weeks, making its report on August 28, 1968.

5. Plaintiff was never reinstated nor allowed to return to work.

6. On September 10, 1968, 15 individuals, at least 14 of whom were presumably directors of Defendant, gathered at a meeting at which Plaintiff was not present and at which none of the safeguards

set forth in the preceding paragraph number 3 were provided Plaintiff, and, at the request of Defendant's Executive Director, voted 10 to 3, with 2 abstentions, to discharge Plaintiff and another employee of Defendant. At the time, Plaintiff's bylaws provided for a minimum membership of 36 and a maximum membership of 42 directors, and that a majority of the membership should constitute a quorum. Defendant then had 29 directors in office. Even if a quorum consisted of 15 of 29, instead of 19 of 36, directors, there existed a dispute of fact as to whether a Mr.James Atkins, not a director and stated by Defendant's president to have seconded the motion to dismiss, was counted as one of the 15 directors present.

7. Plaintiff was never allowed to appear before Defendant's full board of directors, and was allowed to appear before its Executive Committee only once, on July 16, 1968, 10 days prior to Defendant's Executive Director's action, at which time the withdrawal of her prior resignation was allowed and accepted.

Upon Judge McLelland answering the first issue for Plaintiff, the Plaintiff presented the evidence of three witnesses, including herself, as to damages, and Defendant offered no witnesses in rebuttal. Plaintiff appealed the judgment of Judge McLelland ordering Plaintiff's reinstatement and an award of $43,364.90 in damages to the Court of Appeals.

The Court of Appeals reversed the judgment of the Superior Court, apparently stating within the opinion facts contrary

to those stipulated by the parties, and holding that the Grievance Committee's determination was not binding upon Defendant's board of directors, stating no authority in support of said holding and making no reference to the limitations with respect to termination of Plaintiff's employment to which Defendant stipulated it was subject.

II. LEGAL BASIS FOR REVIEW

Petitioner respectfully submits that the Court of Appeals, in reversing the judgment of the trial court, made grave errors in failing to be bound by and to give effect to the facts stipulated by the parties, and in failing to construe Defendant's personnel **********
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APPENDIX M

RESPONDANT'S REPLY TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW

OF THE SUPREME COURT OF NORTH CAROLINA AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF NORTH CAROLINA:

COMES NOW the Defendant, Wake County Opportunities, Inc. and for its Answer to the Petition for Discretionary Review and for Writ of Certiorari, respectfully urges that this Court not grant such a Petition; and in support thereof, respectfully shows:

1. The allegations set forth in Plaintiff's First Section entitled "1. FACTUAL BASIS FOR REVIEW" are in dispute to the following extent:

(a) The allegations contained in numbered Paragraph 2,5,6, and the first paragraph following numbered Paragraph 7 are admitted.

(b) The allegations contained in all other paragraphs, including the remaining non-numbered paragraphs and numbered paragraphs, 1,3,4, and 7 are denied.

II. Petitoner's legal basis for review is completely predicated upon Plaintiff's assertion that Plaintiff, when granted a grievance hearing, "won her appeal." This assertion is incorrect. The Grievance Committee only recommended that Plaintiff be given a two-week probationary term to await decision of the Defendant's Executive Committee (R p Exh. #47). Two weeks later, the Defendant's Board of Directors dismissed the

the Plaintiff (R p 41, Stipulation "O"). If, as the record shows, Plaintiff did not "win reinstatement" from the Grievance Committee, Plaintiff;s legal basis for review is non-existent.

III. Further answering the Petition, Defendant states that the subject matter of this appeal does not have significant

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